

CHAPTER 10. ACCESS TO PUBLIC RECORDS INCLUDING RECORDED AND ELECTRONIC MEDIA

[Ord. 2.09, 12-21-1982; Ord. No. 2015-20, 11-10-2015]

10.01 DEFINITIONS. (1) "Authority" means any of the following having custody of a record: an office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.

(2) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library. [Ord. 2.09, 12-21-1982]

10.02 LEGAL CUSTODIANS. (1) An elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.

(2) Unless otherwise prohibited by law, the County Clerk or the Clerk's designee shall act as legal custodian for the County Board.

(3) Unless otherwise specified by s. 19.33, Wis. Stats., the chairperson of a committee of elective officials, or the designee of the chairperson, is the legal custodian of the records of the committee. The chairperson of a board, commission or other body, or the designee of the chairperson, is the legal custodian of the records of the board, commission or other body.

(4) The County Administrator shall act as legal custodian for all audio and video recordings created or maintained by the County unless another legal custodian has been designated below or by other legal authority.

(5) For every authority not specified in subs. (1), (2) or (3) above, the authority's chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his or her staff to act as the legal custodian. (This section applies to department heads.)

(6) Every legal custodian shall name a person to act as legal custodian in his or her absence or the absence of his or her designee. This subsection does not apply to members of the County Board.

(7) The designation of a legal custodian does not affect the powers and duties of an authority under this subchapter.

[Ord. 2.09, 12-21-1982; Ord. No. 2015-20, 11-10-2015]

10.03 PROCEDURAL INFORMATION. (1) Pursuant to s. 19.34, Statutes, and the guidelines therein listed, each authority shall adopt, prominently display and make available for

inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which the legal custodian from whom and the methods whereby the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This section does not apply to members of the County Board.

(2)(a) Form of Request - The Wisconsin Public Records Law dictates that certain actions must be taken with regard to oral requests for records and that certain more formal actions are taken in response to written requests for records. However, Wisconsin law does not expressly prescribe how to respond to the following methods of communication. Therefore, requests made by the following means shall be responded to as follows:

1. E-mail - a request made by e-mail may be responded to by e-mail or in writing and shall have all of the formalities as though the request was made in writing.

2. Voice-mail - a request made by voice-mail shall be responded to as though it were made orally.

3. Instant Messaging/Text Messaging - a request made in either such manner shall be responded to as though it were made orally.

(b) Treatment of Certain Data as Records - The Wisconsin Public Records Law provides little or no guidance as to whether the raw and perishable data of the following technologies qualify as records that must be maintained. Therefore, the Jefferson County Board of Supervisors determines the following status of these technologies:

1. E-mail - the data in an e-mail message may constitute a public record and is subject to maintenance as a public record. The data in an e-mail is subject to the same analysis under the public records statutes as an equivalent paper or hard copy record. The Information Technology Manager is responsible for ensuring that all e-mails are properly preserved for such analysis.

2. Voice-mail - a voice-mail message is not a public record and voice-mail messages do not have to be maintained as public records. These messages are the functional equivalent of phone conversations. Additionally, voice-mail messages share many of the attributes of personal notes which are not public records. Finally, these messages cannot be indexed or maintained in any manner that would allow for their easy classification, searching or retrieval.

3. Instant Messaging (IM)/Text Messaging - Except as set forth in this paragraph and in subparagraph (2)(b) 9 and 10 hereof, the data involved in IM and Text Messaging communications is not subject to maintenance as a public record. IM and Text Messaging has all of the attributes of instantaneous exchange of ideas, as does a regular telephone conversation. Furthermore, the data exchange has the same limitations for capturing and storage of data as voice-mail. Therefore, County employees and officials shall refrain from using such services for official communication purposes or for matters that would result in a public record if another format such as email or written communication were employed, unless the employee or official preserves a copy of such communication by either copying to their county email account, downloading the communication to their county computer, making a computer file of the communication or by printing and retaining a hard copy of such communication.

4. Voice Over the Internet Protocol (VOIP) - The County does not monitor or record the data associated with the conversations that occur over VOIP. Such conversations are the very same real time voice communications as standard telephone conversations that are not public records. The only difference between these communications is the medium employed in

transmitting the voice communications from one participant in the conversation to all others involved in the conversation.

5. Audio, Video, Data and Radio Transmissions and Communications - Although audio, video, data and radio transmissions and communications may be processed through County computers, the County does not routinely copy the data or maintain records of such communications. Whenever the County copies, records or maintains copies or recordings of such communications or transmissions, those copies may constitute public records that are subject to records requests and which must be maintained according to the appropriate records retention schedule. The Jefferson County Sheriff's Office is the custodian for police and fire radio communications.

6. Audio and Video Recordings - Unless otherwise provided herein, audio and video recordings are public records which must be maintained according to the Jefferson County records retention schedule. All audio and video recordings of Jefferson County employees performing their job duties may be reviewed as needed by the Human Resources Director or the County Administrator for the purpose of addressing employee performance issues or employee disciplinary matters. All audio and video recordings of judicial proceedings before a Circuit Court Judge or Circuit Court Commissioner, including all audio and video recordings of a courtroom when the court is not conducting judicial proceedings or is in recess, must be approved by the Circuit Court Judge or Circuit Court Commissioner assigned to that courtroom prior to review or release in accordance with the Wisconsin Public Records law. All other requests to review or release audio and/or video recordings of Jefferson County employees performing their job duties and audio and/or video recordings of areas open to the public within the courthouse or county owned buildings and property not addressed above shall be approved by the Jefferson County Administrator and Corporation Counsel prior to review or release in accordance with the Wisconsin Public Records law. This includes requests received from Jefferson County elected officials, department heads, employees and members of the public. Failure to follow this procedure will subject Jefferson County department heads, employees and staff to discipline, up to and including termination of employment.

7. Accessing Live or Recorded Video and Audio Recordings as Part of Job Duties - Video cameras have been placed throughout County buildings, including the courthouse and court rooms, which are accessible by certain County employees and staff in the performance of their duties such as judges, court commissioners, sheriff's deputies, mediators/evaluators, court reporters, judicial assistants and Clerk of Courts/Register in Probate staff. Notwithstanding the above paragraph 6, employees and staff may monitor and access live and recorded courthouse video and audio as necessary for work-related functions including security purposes. Sensitivity to privacy and confidentiality concerns must always be exercised. Employees and staff accessing live and recorded video and/or audio for purposes unrelated to the performance of their specified job duties is prohibited. Violation of this section will subject Jefferson County department heads, employees and staff to discipline, up to and including termination of employment.

8. Rewritable Recording Systems - Those systems where the recordings are routinely overwritten by newer recordings, such as in continuous loop videotape or digital video written to a camera's hard drive or memory, such data does not constitute a record unless it is further downloaded, printed or separately preserved to memorialize some event or proceeding. Until such time as these recordings are downloaded, printed or separately preserved, these recordings do not have to be preserved and, as the recording equipment programs/protocols may

dictate, can be overwritten, erased or otherwise destroyed. However, if such data is downloaded, printed, or separately preserved it shall be treated as a record and shall be retained in accordance with the Jefferson County Records Retention Schedule.

9. Recordings Made for the Purpose of Preparing Minutes of Meetings – In accordance with sec. 19.21(7), Wis. Stats., any audio or video recording of a meeting, as defined in sec. 19.82(2), Wis. Stats., by any County body as defined by sec. 19.82(1), to include each County committee, board, commission or other body, may be destroyed, overwritten, or recorded over no sooner than ninety (90) days after the minutes have been approved and published if the purpose of the recording was to take minutes of the meeting. Employees and staff may access these recordings as needed to perform of their job duties.

10. Electronic Document Files - Where records, as that term is defined in sec. 19.32(2) Wis. Stats., exist in an electronic format only, such electronic records shall be maintained according to the appropriate retention schedule. Where both hard copy (i.e., paper) and electronic copies of a record exist they shall each be subject to public records requests. However, when the custodian has designated, pursuant to sub. 9 electronic records as the official records, only the electronic copy shall be retained and made available for inspection under the public records laws. Where the custodian has not made such a designation, only the hard copy shall be subject to inspection as a public record and the electronic copies shall be treated and disposed of as draft documents that do not need to be maintained beyond creation of the final hard copy.

11. Electronic Logs/Temporary Data Files - Electronic logs and temporary data files provide detailed information about the design and functionality of the County's computer network. These logs are routinely overwritten on a daily basis due to the high volume of traffic that is being logged. Unrestricted access to these logs and files would constitute a breach of system security and leave the system vulnerable to exploitation and hacking. In order to ensure network security, these logs are available to the Information Technology Manager and authorized staff only. These determinations apply to the following types of logs and data files:

a. Syslogs for Network Electronic Devices - All logs created by network devices such as firewalls, routers, switches, etc., which are used for monitoring and trending computer network traffic patterns and/or detecting unauthorized network traffic.

b. Network Server Security, Application and Event Logs - These logs are used to monitor activity on County network servers including successful/unsuccessful login attempts, file system access, hardware performance, etc. These logs provide detailed information about County network account ID's, file system structure, and hardware profiles.

c. Network Security Appliance Logs - All logs created by network security devices such as the anti-virus appliance, anti-SPAM appliance, content filtering appliance, etc., which are used to monitor specific types of unauthorized or malicious traffic on the County network. These logs identify specific network traffic patterns and/or protocols that are allowed or disallowed on the County network.

d. Application Logs - These logs are used to monitor activity on various database applications, but do not contain specific audits of database transactions. These logs can contain version information, program variables, and programming logic.

12. Emerging Technologies and Records Retention – As new information technologies emerge, the Information Technology Manager shall evaluate these technologies and their benefit to County operations. The Information Technology Manager shall consider whether any of these technologies provide the capacity to archive public records created by these

technologies. Whenever it is economically and practically feasible to archive records created by such technologies, such archiving shall be incorporated into any deployment of said technologies. Whenever the technologies do not provide for such archiving capabilities, the Information Technology Manager shall consider whether the benefits of employing such technologies outweigh the risks that some public records may not be retained by deployment of such technologies. Where such benefits outweigh these risks, County employees shall refrain from using such technologies for official communication purposes or for matters that would result in a public record if another format such as email or written communications were employed. In the event that such technologies are used for these communication purposes, the employee shall preserve a copy of such communication, by either copying them to their email account, downloading the communication to their County computer, making a computer file of the communication or by printing and retaining a hard copy of such communication. The Information Technology Manager shall also ensure that, as soon as practical and economically feasible, archiving systems are obtained for any information technology that is deployed without an archiving system.

13. Use of Technologies to Avoid Duty to Preserve Public Records Prohibited - No employee or County official shall use or employ any form of communication or information technology with the intent or design to circumvent the records retention requirements of this ordinance. For example, text messaging shall not be used in lieu of email to share or create a public record unless the employee complies with the provisions of subparagraph (2)(b)9, above. [Ord. 2.09, 12-21-1982; Ord. No. 2015-20, 11-10-2015]

10.04 ACCESS TO RECORDS; FEES. (1) The rights of any person who requests inspection or copies of a record are governed by the provisions and guidelines of s. 19.35(1), Statutes.

(2) Each authority shall provide any person who is authorized to inspect or copy a record which appears in written form pursuant to s. 19.35(1)(b), Statutes, or any person who is authorized to and requests permission to photograph a record the form of which does not permit copying pursuant to s. 19.35(1)(f), Statutes, with facilities comparable to those used by its employees to inspect, copy and abstract the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic, or other equipment or to provide a separate room for the inspection, copying or abstracting of records.

(3) (a) Each authority shall impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by the law. Photocopies shall cost 25¢ per page.

(b) Each authority shall impose a fee upon the requester of a copy of a record for the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority shall impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is \$50 or more.

(d) Each authority shall impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

(e) An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

(f) Each authority shall require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds \$5.00.

(4) Each authority in acting upon a request for any record shall respond within the times and according to the procedures set out in s. 19.35(4), Statutes.

[Ord. 2.09, 12-21-1982; Ord. No. 2015-20, 11-10-2015]

10.05 SEPARATION OF INFORMATION. If a record contains information that may be made public and information that may not be made public, the authority having custody of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. Each authority shall consult with the County Corporation Counsel before releasing any information under this section.

10.06 Pursuant to Section 59.20(3)(c) of the Wisconsin Statutes and in order that processing, recording and indexing of documents may be completed to conform to the day of reception, the cutoff reception time for filing and recording of documents is hereby advanced by one hour in any official business day during which time the Register of Deeds Office is open to the public. The Register of Deeds may provide in his or her notice under s. 19.34(1) that requests for inspection or copying of the records of his or her office may be made only during a specified period of not less than 35 hours per week. For all other purposes, the office shall remain open to the public. [Ord. 2.09, 12-21-1982; Ord. No. 2005-26, 10-11-2005].

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